

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Inquiry Concerning Scope of Public  
Service or Activity Cost Reporting

Docket No. PI2014-1

NOTICE ESTABLISHING DOCKET CONCERNING THE  
SCOPE OF PUBLIC SERVICE OR ACTIVITY COST  
REPORTING UNDER 39 U.S.C. 3651(B)(1)(C)

(Issued August 20, 2014)

I. INTRODUCTION

The Commission invites public comment concerning the scope of public service or activity cost reporting in its Annual Report to the President and Congress (Annual Report). Specifically, the Commission seeks public comment on the universe of "other public services or activities" that the Commission should review under 39 U.S.C. 3651(b)(1)(C).

II. BACKGROUND

Each year, to fulfill its responsibilities under 39 U.S.C. 3651, the Commission issues an Annual Report concerning its operations under title 39. 39 U.S.C. 3651(a). The Annual Report must contain, among other things, "an estimate of the costs incurred by the Postal Service in providing...other public services or activities which, in the

judgment of the Postal Regulatory Commission, would not otherwise have been provided by the Postal Service but for the requirements of law." *Id.* 3651(b)(1)(C).

In its most recent Annual Report, the Commission stated that in 2014 it would review the scope of "other public services or activities" under section 3651(b)(1)(C).<sup>1</sup> For FY 2013, that estimate included only the costs of delivering mail six days a week instead of five days, and revenue "lost" from unzoned First-Class Mail and Library/Media rates *Id.* at 30. The Commission noted, however, that this approach may be too narrow, and that a more comprehensive interpretation of section 3651(b)(1)(C) could also include the estimated net cost of activities such as the Inspection Service or the Postal Service Office of Inspector General, as well as services such as the addressing system or emergency response. *Id.* at 31.

The legislative history of 39 U.S.C. 3651 provides some insight into determining what Postal Service actions to include as "other public services or activities." A 2005 House Committee Report stated that as part of the Annual Report, "the Commission is directed to prepare an estimate of public service costs borne by the Postal Service including universal service costs, revenue-forgone costs, and other costs (e.g., law enforcement activities)."<sup>2</sup> Aside from law enforcement activities, "other public services or activities" may include provisions in the U.S. Code that require the Postal Service to provide services or activities that may fall under the rubric of the public interest.

In early 2014, the Commission requested that the Postal Service provide its views on the universe of "other public service or activities" that it believes the Commission should review under section 3651(b)(1)(C), including an estimate of these costs. The Postal Service submitted an analysis of activities that could qualify for reporting under section 3651(b)(1)(C), which is included in the Attachment. In its analysis, the Postal Service identified the following activities for potential future reporting:

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<sup>1</sup> Annual Report to the President and Congress Fiscal Year 2013 at 31.

<sup>2</sup> H.R. Rep. No. 109-66, part 1, at 50 (2005).

- Employee and retiree health benefits;
- Federal retirement benefits;
- Binding arbitration of labor issues;
- Postal Inspection Service;
- Office of Inspector General;
- Merit Systems Protection Board and Equal Employment Opportunity Commission appeals;
- Federal workers' compensation program; and
- Other regulatory requirements, including Postal Regulatory Commission funding and aspects of service performance measurement, emergency detection and response, and federal purchasing requirements.

See Attachment at 4-16.

The Postal Service also states that other unfunded mandates, such as compliance with the Freedom of Information Act and Privacy Act, impose costs that may not be substantial enough to warrant reporting in the Annual Report. *Id.* at 16. It emphasizes that it is not suggesting that the activities listed in the analysis are unimportant or that the Postal Service necessarily should not be required to perform them. *Id.* at 4. Rather, it asserts that the purpose of section 3651(b)(1)(C)'s reporting requirement is to inform Congress and the President of Postal Service mandates so that policymakers may make better informed decisions in these areas. *Id.*

### III. PUBLIC INQUIRY

The Commission establishes Docket No. PI2013-2 to invite public comment on the meaning of "other public services or activities" in 39 U.S.C. 3651(b)(1)(C). Specifically, it seeks comments on the Postal Service's analysis of activities that could qualify for reporting under section 3651(b)(1)(C), which is included in the Attachment. The Commission also requests comments that identify additional "public services or activities" that should be included in this calculation and an estimate of these costs. For

each public service or activity identified, comments should provide the estimated FY 2013 cost or an explanation of how such costs could be estimated, as well as the basis used to develop any estimated costs.

Comments are due no later than September 17, 2014. Reply comments are due no later than October 1, 2014. Comments are to be submitted via the Commission's online filing system at <http://www.prc.gov> unless a waiver is obtained. Information on how to obtain a waiver may be found by contacting the Commission's dockets section at 202-789-6846.

Section 505 of title 39 requires designation of an officer of the Commission (Public Representative) in all public proceedings to represent the interests of the general public. The Commission hereby designates James Waclawski as Public Representative in this proceeding.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission hereby establishes Docket No. PI2014-1 to invite public comment on the universe of "other public services or activities" that the Commission should review under 39 U.S.C. § 3651(b)(1)(C).
2. Comments are due no later than September 17, 2014.
3. Reply comments are due no later than October 1, 2014.
4. Pursuant to 39 U.S.C. 505, the Commission appoints James Waclawski to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
5. The Secretary shall arrange for publication of this Notice in the *Federal Register*.

By the Commission.

Shoshana M. Grove  
Secretary



## **ANALYSIS OF ADDITIONAL POSTAL SERVICE ACTIVITIES THAT COULD QUALIFY FOR REPORTING UNDER 39 U.S.C. § 3651(b)(1)(C)**

### **I. Introduction**

This memorandum analyzes Postal Service public services or activities about which the Commission could report under 39 U.S.C. § 3651(b)(1)(C). That statutory provision requires the Commission to report annually to Congress about the costs associated with "other public services or activities which, in the judgment of the Postal Regulatory Commission, would not otherwise have been provided by the Postal Service but for the requirements of law."

Since 2008, the Commission has included only the costs of (1) delivering mail six days a week instead of five and (2) maintaining unzoned rates for First-Class Mail, Library Mail, and Media Mail.<sup>1</sup> In its most recent report, however, the Commission questioned whether this interpretation was too "narrow" and postulated that "[a] broader interpretation could include the net cost of activities such as the Inspection Service or the Postal Service Office of Inspector General. It could also include cost estimates of services such as the addressing system or emergency response."<sup>2</sup>

As additional context, other subparagraphs of 39 U.S.C. § 3651(b)(1) require the Commission to report about (1) the costs of providing universal service to certain areas and (2) the revenue forgone due to requirements to offer free or reduced rates. In the former category, the Commission has included the costs of maintaining small Post Offices, Group E Post Office Box service, and the Alaska Air Subsidy. In the latter, the Commission has focused on the subsidies that Periodicals and nonprofit mailers enjoy. These reporting requirements are not the primary subject of this memorandum, although section III.C below offers some suggestions for the Commission to explore.

<sup>1</sup> E.g., POSTAL REG. COMM'N, ANNUAL REPORT TO THE PRESIDENT AND CONGRESS, FISCAL YEAR 2013 (hereinafter "FY13 ANNUAL REPORT") (2014), at 30-31; see POSTAL REG. COMM'N, REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY (hereinafter "USO REPORT") (2008), at 123-31, 133-34, 139-41. The Commission has initiated a study into its calculation of the costs associated with six-day mail delivery and has invited comments on that study. POSTAL REG. COMM'N, FUTURE APPLICATIONS OF DYNAMIC DELIVERY COST MODEL (Apr. 9, 2014), [http://www.prc.gov/prc-docs/home/whatsnew/Swiss%20Economics%20Model%20-%20Future%20Applications%20of%20Dynamic%20Delivery%20Cost%20Model\\_3544.pdf](http://www.prc.gov/prc-docs/home/whatsnew/Swiss%20Economics%20Model%20-%20Future%20Applications%20of%20Dynamic%20Delivery%20Cost%20Model_3544.pdf). That study is outside the scope of this memorandum.

<sup>2</sup> FY13 ANNUAL REPORT at 31.

## II. Analytical Approach

The statute in question deals with “public services or activities [that the Postal Service would not provide] but for the requirements of law.” The Postal Service interprets this provision as requiring the Commission to discuss (1) services provided to the public that are not encompassed by 39 U.S.C. § 3651(b)(1)(A) and (B), and (2) any Postal Service activities that are the result of legal mandates beyond what the Postal Service might otherwise do. “Activities” is a term with a broad meaning under title 39, and refers to Postal Service operations generally. See, e.g., 39 U.S.C. §§ 409(h), 2009, 3634. Even if “public” were interpreted to modify “activities” as well as “services,” an “activity” that is mandated by law necessarily reflects Congress’s determination that it provides some level of “public” benefit, either direct or indirect. Therefore, for present purposes, we will construe the statutory provision to encompass all legally-mandated services or activities.

In doing so, we include only requirements to *engage in* certain activities or to do so in a particular way,<sup>3</sup> and not requirements to *refrain altogether from* a given activity. Section 3651(b)(1)(C) focuses on the Postal Service’s costs “in providing” services or activities that it “would not otherwise have . . . provided.” This phrasing suggests a focus on affirmative activities that incur costs. However, legal restrictions and prohibitions also impose implicit costs in terms of revenue opportunities forgone. Examples of these include the cap on market-dominant prices, the prohibition on new nonpostal services, prohibitions on carrying nonmailable matter (e.g., alcoholic beverages), and the prohibition on certain activities regarding address list information.<sup>4</sup> Even if the Commission determines that these prohibited activities do not fall within the literal scope of Section 3651(b)(1)(C), they form part of the same legal context, and they may bear mention in the Commission’s annual report to Congress.

There is also the question of appropriate benchmarking. The Commission has advised that it will apply a “profitability approach” to this type of inquiry, essentially asking what net effect the removal of a given legal constraint would have on Postal Service finances, when compared with the status quo.<sup>5</sup>

This approach applies across all three of the 39 U.S.C. § 3651(b)(1) reporting parameters. In this specific context, Section 3651(b)(1)(C) essentially asks for the

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<sup>3</sup> For example, the Postal Service is required to provide certain employee benefits. While certain elements of this requirement could be cast in terms of a prohibition (e.g., on integrating fully with Medicare, or on investing pension assets in market funds), the Postal Service is performing the activity of providing employee benefits, albeit in an inefficient way as a result of legal requirements.

<sup>4</sup> 5 U.S.C. § 552a(n) (address list information); 18 U.S.C. § 1716(f) (alcoholic beverages); 39 U.S.C. §§ 404(e) (nonpostal services), 410(b)(1) (applicability of 5 U.S.C. § 552a), 412(a) (address list information), 3622(d)(1)(A) (price cap).

<sup>5</sup> USO REPORT at 112-13, 117-18, 120-22.

Commission to discuss the costs of any mandates that Congress or the President has imposed upon the Postal Service, to the extent that the Postal Service might not otherwise perform the mandated services or activities, or might perform the mandated services or activities in a different way. Private businesses are not subject to these mandates (although they may have other, less stringent mandates of their own under applicable federal or state laws), and most other federal entities receive appropriated public funds to fulfill such mandates.<sup>6</sup>

We wish to stress that **the point of this exercise is not to suggest that the activities in question are unimportant or that the Postal Service necessarily ought not to be required to perform them.** Obviously, Congress and the President have decided that the Postal Service's performance of these activities serves important public policy goals, and the Postal Service stands ready to fulfill those goals so long as that is Congress and the President's intent and we are financially capable of doing so. The advisability of these activities as a public policy matter is a subject for another forum, and in many instances the Postal Service has proposed reforms to Congress that will ensure that it can continue to perform several of these activities in a more effective and efficient manner.<sup>7</sup> We understand the purpose of Section 3651(b)(1)(C)'s reporting requirement to be simply to inform Congress and the President of the mandates under which the Postal Service operates, so that policymakers may make better-informed decisions in these areas.

### III. Analysis of Potential Activities for Inclusion

As the Commission has recognized, the Postal Service performs numerous legally-mandated activities beyond those that the Commission has included in its reports to date. We have analyzed many activities for potential future reporting. Before describing them, it is important to note the necessary imprecision of many of the preliminary cost estimates. Some activities offer a clear starting point for estimating costs; in other cases, costs could be extrapolated on the basis of discrete assumptions; in still others, the Postal Service could make only a tentative estimate or none at all.

Even if firm costs cannot be estimated for certain mandates at this time, that does not mean that they should be excluded from the Commission's report. As noted

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<sup>6</sup> Congress may or may not specifically tie an appropriation to a given mandate. Even if Congress does not do so, however, federal entities' total budget represents the aggregated cost of performing mandated activities, and most or all of that budget is typically funded through appropriations.

<sup>7</sup> For example, the requirement that the Postal Service prefund retiree health benefits is the subject of substantial policy debate between various stakeholders. As a general proposition, the Postal Service supports the policy value of ensuring that its liabilities are adequately funded, and it is seeking reforms to ensure that it has the financial ability to fund those liabilities. For purposes of this exercise, however, it is accurate to acknowledge that the prefunding requirement imposes costs on the Postal Service that another type of entity would not bear, particularly considering that the liability is larger than it would be under a more appropriate plan design, as discussed in section III.A.1 below.

above, the report is an important opportunity to reiterate the significant mandates under which the Postal Service operates, to give Congress a full picture as it makes important policy decisions affecting the Postal Service. It would serve no purpose to exclude significant matters from the report simply because an estimate of the specific costs is not readily available or cannot be developed without significant expense.

This discussion will focus on activities that are estimated or suspected to cost at least \$10 million per year. A second section will briefly discuss other activities below this threshold. A third section also mentions possible items for evaluation under 39 U.S.C. § 3651(b)(1)(A) and (B).

#### **A. High-Cost Activities (\$10 Million or More)**

The high-cost activities are described in descending order, according to estimated or suspected financial impact.

##### **1. Employee and retiree health benefits**

Source of requirement: 5 U.S.C. Chapter 89; 39 U.S.C. § 1005(f)

The Postal Service is required to offer employee and retiree health benefits through the Federal Employees Health Benefits Program (FEHBP).<sup>8</sup> FEHBP participation entails major costs to the Postal Service that would not be incurred by a private employer with the flexibility to design its own employee and retiree health benefits plans. While other federal entities are also required to participate in FEHBP, they do so on the basis of appropriated public funds.

One of the most important factors resulting in higher costs of mandatory FEHBP participation is FEHBP's failure to properly integrate retiree health benefits (RHB) with Medicare. FEHBP does not ensure that retirees (and covered family members of retirees) enroll in Medicare Parts A and B when they become eligible. For other employers that provide retiree health care coverage (and most do not),<sup>9</sup> the

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<sup>8</sup> In principle, Section 1005(f) permits those benefits to be "varied, added to, or substituted for" through collective bargaining and consultation, so long as the new fringe benefits program "on the whole is [no] less favorable to the officers and employees than fringe benefits in effect" when the Postal Reorganization Act entered into force. 39 U.S.C. § 1005(f). In light of employee and political resistance to large-scale change in these benefits, however, Section 1005(f) has effectively operated as a mandate to participate in FEHBP for employees. Furthermore, because employees participate in FEHBP, they are entitled to continue receiving FEHBP coverage upon retirement through the operation of the FEHBP statute itself, so long as they meet certain conditions. 5 U.S.C. § 8905(b).

<sup>9</sup> See FRANK MCARDLE ET AL., RETIREE HEALTH BENEFITS AT THE CROSSROADS 1 (Henry J. Kaiser Family Found. 2014), <http://www.kaiserfamilyfoundation.files.wordpress.com/2014/04/8576-retiree-health-benefits-at-the-crossroads.pdf> ("Since 1988, the percentage of large firms offering retiree health coverage has dropped by more than half from 66 percent in 1988 to 28 percent in 2013[.]").

essentially universal practice is to ensure that their plans do not pay costs that could otherwise be borne by Medicare. This practice of Medicare coordination is crucial to keeping the cost of retiree health care affordable for employers. Because Medicare acts as the primary payer for retirees who are also eligible for benefits under an employer-sponsored plan, employers either require that retirees enroll in Medicare, or require retirees who choose not to enroll to bear the costs that Medicare would have paid. However, FEHBP does neither of these things. Therefore, even though the Postal Service and its employees pay Medicare taxes, a substantial percentage of eligible postal retirees do not enroll in Medicare, and these non-participation rates are growing among those who have recently retired. The significant percentage of retirees that do not have Medicare coverage results in increased FEHBP premiums, and therefore increases the costs that the Postal Service incurs in providing health care coverage to both its active employees and its retirees.<sup>10</sup>

Furthermore, FEHBP does not take advantage of the benefits offered by Medicare Part D. In particular, it does not allow employing agencies, including the Postal Service, to benefit from Medicare Part D savings and subsidies through an employer group waiver plan (EGWP). This also increases the Postal Service's annual health care costs.

The inability to properly integrate retiree health care coverage with Medicare is also of critical significance because of the Postal Service's obligation to prefund RHB. No private sector entity is subject to a similarly onerous RHB prefunding mandate, and any prefunding that does occur is done in a manner that is balanced with the entity's other financial needs. Moreover, even where it is practiced, an employer rarely funds 100 percent of future RHB liabilities, as the Postal Service is required to do: only 38 percent of Fortune 1000 companies that offer retiree health benefits prefund any of their liability, and those that do so prefunded only 37 percent of their post-Medicare RHB liability on average in FY2011.<sup>11</sup> The Postal Service has currently funded 49 percent of an inflated RHB liability that does not reflect full Medicare integration. Considering that private companies that prefund would properly integrate their retiree health care coverage with Medicare (thereby reducing the size of any RHB liability), the burden of their discretionary prefunding is significantly less onerous than the mandate imposed on the Postal Service. Furthermore, the only other major Federal entity with a prefunding mandate (that is, the Department of Defense with respect to its TRICARE program) receives appropriated funds to do so and, most importantly, is allowed to properly integrate its retiree health care coverage with Medicare. Even then, its obligations are 35

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<sup>10</sup> Medicare non-participation increases costs for all FEHBP participants because FEHBP uses a blended rate structure: FEHBP plans charge the same rate to cover employees and retirees.

<sup>11</sup> UNITED STATES POSTAL SERV, OFFICE OF THE INSPECTOR GEN. (hereinafter "OIG"), REPORT NO. FT-MA-12-002, PENSION AND RETIREE HEALTH CARE FUNDING LEVELS: MANAGEMENT ADVISORY REPORT 4 (2012), <http://www.uspsoidg.gov/sites/default/files/document-library-files/2013/FT-MA-12-002.pdf>.

percent funded, a level on par with that of Fortune 1000 companies and much lower than either the Postal Service's current or expected level.<sup>12</sup>

The RHB prefunding requirement has already cost the Postal Service \$20.9 billion in direct contributions, exhausting its entire \$15 billion borrowing authority and preventing the Postal Service from making necessary capital investments.<sup>13</sup> At the end of FY2013, the Postal Service owed an additional \$16.7 billion on which it has been forced to default, but which still represent unfunded legal requirements. Under current law, the Postal Service owes annual prefunding payments going forward (both fixed payments prior to FY2017 and actuarially-determined payments thereafter) in excess of \$5 billion, which will grow rapidly over time.

Payments of this magnitude would not be required if the Postal Service had the legal ability, like other employers, to integrate its retiree health benefits fully with Medicare. Medicare integration would nearly eliminate the unfunded retiree health care liability and would put the Postal Service in a financial position to afford to fully fund any remaining liability, even if the Postal Service remained in FEHBP. Failure to integrate properly accounts for an estimated **\$43.8 billion** of the Postal Service's current unfunded RHB liability within the FEHBP structure.<sup>14</sup>

Current law also places limits on the use of prior prefunding payments, which a private sector employer who prefunds would not bear or impose on itself. For example, the Postal Service cannot use the existing assets in the Postal Service Retiree Health Benefits Fund (PSRHBFB) to pay premiums for current annuitants until FY 2017. However, it would seem to defy rational business sense for a private employer to place assets aside to pay for benefits outlays, but then not use those assets to actually pay for those benefits, particularly in a time of financial distress.

While improper Medicare integration is the central issue, FEHBP participation also imposes additional costs. The Postal Service does not have the ability to negotiate

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<sup>12</sup> State governments' prefunding level, 30 percent, is comparable to – and even lower than – that of TRICARE or Fortune 1000 companies. *Id.* at 4. State governments also typically integrate their health care coverage with Medicare.

<sup>13</sup> Another \$17.1 billion was transferred to the Postal Service Retiree Health Benefits Fund from other funds that could have otherwise been made available to the Postal Service for other expenses.

<sup>14</sup> JEFFREY C. WILLIAMSON, UNITED STATES POSTAL SERV., STATEMENT BEFORE THE HOUSE SUBCOMM. ON FED. WORKFORCE, U.S. POSTAL SERV. AND THE CENSUS (hereinafter "WILLIAMSON TESTIMONY") 7 (2014), <http://oversight.house.gov/wp-content/uploads/2014/03/Williamson-USPS-Statement-USPS-Unfunded-Liabilities-3-13.pdf>. This number excludes certain annuitants, such as those enrolled in small plans within FEHBP. The full differential would likely be higher if these annuitants were included, as they likely would be under a private employer's plan. For example, the Government Accountability Office (GAO), which was studying the potential impact of a USPS health benefits plan outside FEHBP, noted that full Medicare integration for all eligible annuitants would reduce total RHB liability by \$48.8 billion. GAO, REPORT NO. GAO-13-658, PROPOSED HEALTH PLAN COULD IMPROVE FINANCIAL CONDITION, BUT IMPACT ON MEDICARE AND OTHER ISSUES SHOULD BE WEIGHED BEFORE APPROVAL 18 (2013).

with plan providers and seek best value as a private employer might. Rather, FEHBP plans are arranged by the Office of Personnel Management (OPM), and OPM's bargaining power is diluted across the hundreds of plans that participate in FEHBP. The structure of FEHBP means that plan value is not consistently aligned with plan cost. The Postal Service has determined that premium costs would be lower under an alternative scenario, in which the Postal Service could maximize the strength of its risk pool by contracting with a limited set of plans and by adopting best practices in areas such as wellness and disease management programs. Leaving aside the effect of Medicare integration, a separate Postal Service plan with these elements would reduce the total RHB liability by an additional **\$1.8 billion**.<sup>15</sup>

Overall, if the Postal Service had the flexibility to establish a separate plan that captured these efficiencies, fully integrated with Medicare Parts A and B, and took advantage of Medicare Part D benefits provided through an EGWP, annual premium expense would be reduced by approximately 10 percent. Such a plan would also eliminate the unfunded RHB liability.<sup>16</sup> Indeed, large private delivery companies report unfunded RHB liability that is only 1/11 to 1/33 the size of the Postal Service's, when compared on a per-employee basis.<sup>17</sup>

The Postal Service could still achieve significant savings while remaining in FEHBP, if the program were changed (1) to require Medicare integration for the vast majority of postal retirees and covered family members of retirees and (2) to ensure that the Postal Service captures the savings from that integration through the creation of a separate risk pool. Annual premium expenses would be reduced by approximately 9-10 percent. Furthermore, the unfunded RHB liability would be reduced to only approximately \$3 billion. Thus, even if the Postal Service remained in FEHBP and subject to a RHB prefunding mandate, those payments would at least be manageable (though still higher than those of a hypothetical private employer). In the near term, actuarially-based prefunding payments would be reduced by more than **\$3 billion** a year if full Medicare integration were implemented, an annual savings that would only grow over time.

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<sup>15</sup> GAO, REPORT NO. GAO-13-658 at 18. As noted in footnote 14, under the scenario analyzed by GAO, Medicare integration under a non-FEHBP plan would apply to more annuitants than under the FEHBP scenario. Thus, to analyze the impact of the non-FEHBP scenario analyzed by GAO, one cannot simply add the \$43.8 billion from the previous page with the \$1.8 billion shown here.

<sup>16</sup> For the total cost impact of a scenario where Postal Service employees and annuitants' health benefits were provided by a Medicare-integrated plan outside FEHBP, see *id.* at 17-20.

<sup>17</sup> Compare UPS 2013 FORM 10-K at 10, 76 (reporting 395,000 employees and unfunded RHB liability of \$3.691 billion in 2013) and FEDEX CORP., ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED MAY 31, 2014 (hereinafter "FEDEX 2014 FORM 10-K") 6, 9-11, 87 (2014) (293,900 employees and \$0.883 billion) with USPS 2013 FORM 10-K at 38, 106 (491,017 employees and \$48.322 billion).

## 2. Federal retirement benefits

Source of requirement: 5 U.S.C. §§ 8301 *et seq.*, 8401 *et seq.*; 39 U.S.C. § 1005(d)

The Postal Service is required to participate in federal defined-benefit pension programs: the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS).<sup>18</sup> As with health care, there are many differences between these programs and the sort of pension benefits that private-sector employers have the flexibility to provide.

- 1) The Postal Service is among a shrinking minority of employers in continuing to offer a defined-benefit pension plan. According to Bureau of Labor Statistics data, only 48 percent of large private employers and 10 percent of all such employers offered defined-benefit plans in 2011.<sup>19</sup> In general, one in four such plans was closed to new participants.<sup>20</sup> Even for private employers who offer both types of plans, defined-contribution benefits can make up a significant portion of the mix.<sup>21</sup> A more limited study of eight private- and public-sector employers showed that nearly all had transitioned or were transitioning from defined-benefit to defined-contribution plans, although some of the employers retain defined-benefit plans for their bargaining-unit employees.<sup>22</sup> It is therefore entirely possible that, but for the requirements of law, the Postal Service might offer a defined-contribution pension program that would be less costly than CSRS or FERS for at least a certain portion of its employees. The Postal Service would also have the ability to negotiate changes to its defined-benefits programs to the extent they were maintained, whereas today those benefits are dictated by statute.<sup>23</sup>

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<sup>18</sup> As part of FERS, the Postal Service contributes to the Thrift Savings Plan (TSP), which is a defined-contribution program, but FERS also includes a substantial defined-benefit component.

<sup>19</sup> William J. Wiatrowski, *The Last Private Industry Pension Plans: A Visual Essay*, MONTHLY LABOR REVIEW, Dec. 2012, at 6, <http://www.bls.gov/opub/mlr/2012/12/art1full.pdf>.

<sup>20</sup> *Id.* at 5. CSRS is closed to new participants, but FERS is not.

<sup>21</sup> Defined-contribution pension expense accounted for approximately 43 percent of FedEx's total pension expense in the June 2013-May 2014 fiscal year. FEDEX 2014 FORM 10-K at 84. By contrast, Thrift Savings Plan (TSP) contributions were only one-quarter of the Postal Service's total retirement expense in FY2013 (excluding Social Security). USPS 2013 FORM 10-K at 95. However, this does not account for the fact that the Postal Service will soon be required to amortize the unfunded CSRS liability, which will increase its annual expense by an estimated \$1.6 billion. If the Postal Service's FY2013 pension expense (excluding Social Security) were increased to account for this payment, TSP contributions would have only been 18 percent of the Postal Service's total retirement expense. In other words, FedEx's defined-contribution plan plays more than twice as big a role in its retirement expense profile as TSP does in the Postal Service's.

<sup>22</sup> OIG, REPORT NO. HR-WP-14-002, POSTAL SERVICE RETIREMENT BENEFITS BENCHMARKING 4-12 (2014), <http://www.uspsoig.gov/sites/default/files/document-library-files/2014/hr-wp-14-002.pdf>.

<sup>23</sup> This inability to negotiate could account for part of the total CSRS and FERS liabilities. Regarding CSRS, the Postal Service is required to begin making amortization payments for the unfunded portion

- 2) OPM does not calculate the Postal Service's CSRS and FERS obligations on the basis of actuarial assumptions that reflect the best available data on postal employee demographics and salaries; rather, OPM does so on the basis of data for all federal employees.<sup>24</sup> If the Postal Service were a private sector employer providing a single-employer defined benefit plan, it would base its pension obligations on its own employees' characteristics, rather than employees of other employers. The Postal Service has estimated that the use of postal-specific demographic and salary growth assumptions would reduce its FERS liability, as well as its biweekly normal cost contribution to FERS.<sup>25</sup>
- 3) In practice, the Postal Service is essentially required to *overfund* its FERS pension obligations, because of the use of government-wide assumptions and the fact that there is no mechanism for it to recoup surpluses. This overfunding is evident in the surpluses that OPM has calculated over the past two decades, even without OPM accounting for postal-specific assumptions.<sup>26</sup> While there is no provision in current law for Postal Service recoupment of FERS pension surpluses, private-sector pension guidelines under the Employee Retirement Income Security Act (ERISA) allow employer contributions to be fully or partially offset when plan assets exceed plan liabilities.

Here, too, it is clear that legal requirements impose a unique cost burden on the Postal Service with respect to its pension obligations. For example, a Fortune 1000 company would be able to estimate its liability on the basis of actuarially appropriate assumptions, and to reduce its contributions in order to recoup any overfunding.

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of that liability in 2017. Those annual payments have recently been estimated at approximately \$1.6 billion per year. WILLIAMSON TESTIMONY at 10.

<sup>24</sup> USPS 2013 FORM 10-K at 32-33; GAO, REPORT NO. GAO-13-872T, HEALTH AND PENSION BENEFITS PROPOSALS INVOLVE TRADE-OFFS 8-9 (2013) ("We support using the most accurate numbers possible [regarding postal-specific assumptions].").

<sup>25</sup> The most recent estimates of the FERS surplus, as determined by calculating the FERS liability using postal-specific assumptions, are on the order of billions of dollars. CONG. BUDGET OFFICE, COST ESTIMATE: S. 1486, POSTAL REFORM ACT OF 2014 (hereinafter "S. 1486 CBO SCORE") 9 (2014), <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s1486.pdf> ("Using data specific to the Postal Service, OPM estimates that the USPS surplus for its FERS account . . . was \$2.4 billion as of September 30, 2013."). The reduction in the normal cost contribution through use of postal-specific assumptions was estimated at approximately \$35 million a year. *Id.* at 10 ("Based on information from OPM, CBO estimates that enacting S. 1486 would lower the Postal Service's annual employer contribution to FERS by about \$35 million..."). Other estimates would make the use of postal-specific assumptions even more beneficial to the Postal Service, depending on the precise assumptions used. WILLIAMSON TESTIMONY at 6-7.

<sup>26</sup> OIG, GAO, and the President support allowing FERS obligations to be calculated accurately and for the Postal Service to recoup its adjusted FERS surplus in some manner. OIG, REPORT NO. FT-MA-12-002 at 2-3; GAO, REPORT NO. GAO-13-872T at 9; WILLIAMSON TESTIMONY at 11.

Alternatively, a Fortune 1000 company could decide to offer only a defined-contribution plan to some or all of its employees. Taken together, these differences account for a significant amount of the Postal Service's pension-related costs.<sup>27</sup> A comparison with FedEx and UPS is instructive: between 2012 and 2013, FedEx's unfunded pension liability *dropped* by more than one-quarter and UPS's by more than half, while the Postal Service's *increased* by 7.8 percent.<sup>28</sup> Unlike other federal entities, however, the Postal Service does not receive appropriated public funds to support the costly legal mandates surrounding employee pensions.

### 3. Binding arbitration of labor issues

Source of requirement: 39 U.S.C. § 1207

The requirement that the Postal Service resolve differences with labor associations through binding arbitration produces a significant cost impact. For example, arbitration awards – and agreements negotiated against the backdrop of binding arbitration – have perpetuated “no layoff” clauses, wage premiums, leave policies, and outsourcing restrictions that are more generous to employees than those found in the private sector.<sup>29</sup> However, to isolate the precise effect of binding arbitration *per se*, it would be necessary to make assumptions about hypothetical outcomes if the Postal Service and its employees had instead been subject to alternative dispute resolution methods, including the ability to resort to strikes and lockouts.

### 4. Postal Inspection Service

Source of requirement: 39 U.S.C. § 204

The Postal Inspection Service is an integral part of America's postal system, and various statutes indicate at least an implicit Congressional expectation that the Postal Service will conduct law enforcement activities.<sup>30</sup> A private sector employer,

<sup>27</sup> The ratio of retirement expense to total compensation and benefits cost is more than three times as high for the Postal Service (12.3 percent) as for private employers (3.7 percent), and the Postal Service's ratio also exceeds that for state government employers (9.4 percent). OIG, REPORT NO. HR-WP-14-002 at iii, 1 (citing Bureau of Labor Statistics data).

<sup>28</sup> Compare UPS 2013 FORM 10-K at 76 (reporting unfunded pension liability of \$6.927 billion in 2012 and \$3.284 billion in 2013) and FEDEX 2014 FORM 10-K at 87 (reporting unfunded pension liability of \$3.167 billion in 2013 and \$2.671 billion in 2014) with USPS 2013 FORM 10-K at 33 (reporting unfunded retirement liability of \$17.9 billion in 2012 and \$19.3 billion in 2013 (projected)).

<sup>29</sup> See FED. TRADE COMM'N, ACCOUNTING FOR LAWS THAT APPLY DIFFERENTLY TO THE UNITED STATES POSTAL SERVICE AND ITS PRIVATE COMPETITORS (hereinafter “FTC REPORT”) 39-40, 56, 65 (2007); PRESIDENT'S COMM'N ON THE UNITED STATES POSTAL SERV., EMBRACING THE FUTURE: MAKING THE TOUGH CHOICES TO PRESERVE UNIVERSAL MAIL SERVICE 118 (2003); see generally OIG, REPORT NO. HR-WP-14-001, LEAVE BENEFITS AND PAID HOLIDAYS BENCHMARKING (2014), <http://www.uspsoig.gov/sites/default/files/document-library-files/2014/hr-wp-14-001.pdf> (finding that the Postal Service offers more paid leave than other employers).

<sup>30</sup> Strictly speaking, the Postal Service is required only to have a Chief Postal Inspector, 39 U.S.C.

of course, would not be responsible for maintaining and financing a dedicated law enforcement agency. It is conceivable that Congress could decide to formally establish a postal law enforcement agency and to support it with public funds, as with other federal law enforcement agencies, or to have other existing, publicly-funded law enforcement agencies assume the Postal Inspection Service's functions. In FY2013, the Postal Inspection Service's net cost was **\$410.7 million**.

#### 5. Office of the Inspector General

Source of requirement: Inspector General Act, 5 U.S.C. App.; 39 U.S.C. § 410(b)(10)

The Postal Service's Office of the Inspector General (OIG) performs numerous functions, the most central of which are to audit and investigate potential instances of fraud, waste, and abuse. In its FY2014 appropriations act, Congress appropriated approximately **\$241.5 million** to support the OIG out of Postal Service revenues. If the Postal Service were another federal entity, Congress would provide public funds to cover these costs. Moreover, while a private entity not subject to OIG requirements might perform similar internal audit tasks, it would not create a parallel, independent entity that duplicates many internal functions.

#### 6. Merit Systems Protection Board and Equal Employment Opportunity Commission appeals

Source of requirement: various provisions of titles 5, 29, and 42, U.S. Code; 5 U.S.C. §§ 8101 *et seq.*; 39 U.S.C. § 1005(c)

Although equal employment opportunity (EEO) laws apply to federal entities, including the Postal Service, as well as to private entities, those laws apply differently to the two types of employers.

- Unlike private-sector employers, the Postal Service cannot seek *de novo* judicial review of adverse Equal Employment Opportunity Commission (EEOC) rulings, including class action certifications. Thus, there is no avenue for the Postal Service to appeal and overturn an ill-founded or unjust EEOC ruling, as there is for private-sector employers.
- In many states, and under private-sector EEOC procedures, private-sector employees can pursue their claims only in court, not in an administrative process geared toward laypersons, as is the case for federal employees.

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§ 204, and certain legal requirements and powers attach to Postal Inspectors without mandating that that such Postal Inspectors necessarily exist. 18 U.S.C. § 3061; 39 U.S.C. §§ 604-606, 1003(c), 1010. The Commission has suggested that law enforcement costs might be particularly amenable to inclusion within the scope of 39 U.S.C. § 3651(b)(1)(C), however, on the basis of legislative history underlying that provision. FY13 ANNUAL REPORT at 31.

- The EEOC uses a more lenient standard to allow class action lawsuits by Postal Service and other federal employees than do the courts with respect to non-federal employees, further lowering the bar to litigation.
- Federal employees are able to use paid official time to work on their EEO complaints, while private employees have no such right.
- The EEOC requires agencies to bear many of the institutional costs of the hearing process, including providing hearing sites and transcripts to complainants and the EEOC.

These differences are believed to account for a larger number of EEO complaints against the Postal Service than a comparable private-sector employer experiences. Consequently, the Postal Service bears higher administrative costs associated with the EEO process, and is exposed to a higher potential for payouts.

In addition, many Postal Service employees can appeal adverse employment actions to the Merit Systems Protection Board (MSPB). Private-sector employees do not have such rights, particularly to the extent that their employment is at-will. While other federal entities' employees have MSPB appeal rights, those entities can use their publicly-funded budgets to support administrative and litigation expenses arising from MSPB appeals.

The Postal Service's combined cost of administering complaints, appeals, and litigation and paying litigation outcomes in FY2013 is estimated at approximately **\$64 million** for EEO-related matters and approximately **\$9 million** for MSPB appeals.

#### 7. Workers' compensation

Source of requirement: 5 U.S.C. §§ 8101 *et seq.*; 39 U.S.C. § 1005(c)

The Postal Service is required to participate in the federal workers' compensation program. The federal program has various features that impose more costs on the Postal Service than state workers' compensation programs would impose on a comparable non-federal employer.

- Unlike a private employer, the Postal Service cannot settle claims or offer buyouts.<sup>31</sup>
- The federal program augments benefits by an additional 8-1/3 percent of a worker's pre-injury wage if the worker has dependents. However, no state does so with respect to permanent total disability benefits, and only three

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<sup>31</sup> OIG, REPORT NO. HR-AR-11-007, POSTAL SERVICE WORKERS' COMPENSATION PROGRAM 3 (2011), <http://www.uspsoig.gov/sites/default/files/document-library-files/2013/HR-AR-11-007.pdf>.

states do so with respect to temporary total disability benefits; even then, the allowable increases are smaller than under the federal program.<sup>32</sup>

- The federal program has a more generous cap on benefits than any state workers' compensation program.<sup>33</sup>
- Federal beneficiaries can continue to receive full benefits past retirement age. This is consistent with the situation under many states' laws. However, ten states terminate benefits for most beneficiaries after a certain number of weeks or upon paying out a certain maximum amount, and one other state reduces benefits upon retirement age.<sup>34</sup>
- Federal workers also have up to three years from their discovery of an injury to file a benefits claim, whereas all but seven states have shorter time limits for filing.<sup>35</sup>
- Postal claimants are not required to use employer-approved physicians, which may increase inefficiencies and the incidence of fraud.<sup>36</sup>

Taken together, all of these factors result in a system that imposes far greater cost on the Postal Service than on employers subject to state workers' compensation laws. Based on publicly reported information, it appears that the Postal Service's workers' compensation liability per employee is several orders of magnitude greater than that of comparable large private delivery companies.

Recent Congresses have considered reforming the federal workers' compensation system to be more comparable, at least in some ways, to state systems. The

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<sup>32</sup> RAMONA P. TANABE, WORKERS' COMPENSATION LAWS AS OF JANUARY 2012 27-29, 32-34 (Workers Comp. Research Inst. No. WC-12-18, 2012), [http://www.wcrinet.org/studies/public/books/wcri\\_wclaws\\_2012.pdf](http://www.wcrinet.org/studies/public/books/wcri_wclaws_2012.pdf); see also S. Rep. No. 112-143, at 16 (2012) ("In addition, the augmented compensation under [the Federal Employees' Compensation Act] is out of line with other compensation systems. For example, no state workers compensation systems provide augmentation for dependents, and the 75 percent level of benefit far exceeds that of any comparable compensation program."); *Examining the Labor Department's Proposed Reforms to the FECA Program: Hearing Before the House Subcomm. on Workforce Protections*, 113th Cong. 10, 14 n.15, 38 (2013) (statement and remarks of Scott Szymendera, Analyst, Congressional Research Service) (noting that ten states and the Territory of Alaska provided augmented compensation when Congress built it into the federal system, but no states do so today) (hereinafter "Szymendera Statement"). Over 70 percent of Federal workers' compensation claimants are paid at the 75-percent rate, which is tax-free and can therefore exceed a worker's pre-injury take-home pay. *Examining the Labor Department's Proposed Reforms to the FECA Program* at 17 (statement of Gary Steinberg, Acting Director, Office of Workers Compensation Programs, Department of Labor).

<sup>33</sup> Szymendera Statement at 7, 11.

<sup>34</sup> *Id.* at 7, 13.

<sup>35</sup> TANABE, WORKERS' COMPENSATION LAWS at 53-55.

<sup>36</sup> *Examining the Federal Workers' Compensation Program for Injured Employees: Hearing Before the S. Subcomm. on Oversight of Gov't Mgmt., the Fed. Workforce, and the Dist. of Columbia*, 112th Cong. 17, 75 (2011) (statement of Gregory Krohm, Executive Director, International Association of Industrial Accident Boards and Commissions).

Congressional Budget Office has estimated that one such reform proposal, in S. 1486, would save the Postal Service approximately **\$40 million** per year.<sup>37</sup> Even under that proposal, the Postal Service's situation would still differ in potentially significant ways from that of an employer under state workers' compensation laws: S. 1486 would grandfather many current beneficiaries at the 75-percent benefits level and would reduce postretirement-age benefits (which, as noted above, resembles the practice at least one state), while preserving the long claims filing deadline and the lack of settlement authority.

#### 8. Regulatory requirements

Source of requirement: 39 U.S.C. chapters 5 and 36

The postal regulatory framework established under title 39 imposes various costs to the Postal Service. The Postal Service bears the direct cost of the Commission's role in the regulatory framework, as the Commission is funded out of Postal Service revenues.<sup>38</sup> In addition, legal, financial, operations, business, and economic experts devote countless hours each year to preparing periodic reports, service-change proceedings under 39 U.S.C. § 3661, filings concerning product classification and price changes (including market-dominant and competitive negotiated service agreements), rulemakings, and so forth. The Postal Service also faces opportunity costs due to the need to await Commission opinions and orders before implementing service, pricing, and product changes.

As one specific, readily quantifiable example of indirect costs attributable to regulatory requirements, the PAEA requires the Postal Service to measure service performance and report the results periodically to the Commission. When this activity was proposed for consideration in its USO Report, the Commission noted that much of the Postal Service's then-anticipated measurement cost was due to voluntary business decisions made before the PAEA's reporting requirements took effect.<sup>39</sup> Since the USO Report, however, the Commission has undertaken multiple service performance-related rulemakings, in the course of which the Commission decided to require service performance reporting at more detailed levels than business needs had dictated for the Postal Service's measurement systems.

As a direct result of the Commission's Orders, the Postal Service performed various modifications to its service performance measurement systems and processes that it would not voluntarily have done, such as developing measurement of Return Receipt service performance; performing the biennial special study of service performance in offshore areas; expanding the EXFC system to include all 3-digit ZIP

<sup>37</sup> S. 1486 CBO SCORE at 11-12, 15-16.

<sup>38</sup> 39 U.S.C. § 504(d). In its FY2014 appropriations act, Congress appropriated approximately **\$14.2 million** to the Commission out of the Postal Service Fund. 39 U.S.C. § 504(d).

<sup>39</sup> USO REPORT at 135-36.

Codes; and developing systems to enable end-to-end measurement of commercial mail. The Postal Service also incurs administrative costs to prepare the periodic reports required by Commission regulations. Taken together, these costs totaled approximately **\$23.3 million** in FY2013.

#### 9. Emergency detection and response

Source of requirement: various Presidential directives

The Postal Service complies with various Presidential emergency preparedness directives and participates in the programs established under them, to the extent consistent with its other obligations.<sup>40</sup> Many of these programs are not believed to add significantly to the Postal Service's costs for the functions involved. However, compliance with National Communications System Directive 3-10, which establishes the minimum requirements regarding communications capabilities that support continuity of operations for federal departments and agencies, is estimated to increase expenditures by **\$1.4 million** in FY2014.

At least one other emergency response function does involve significant cost, although it is not tied to a specific "requirement of law."<sup>41</sup> The Postal Service bears the cost for a contract to irradiate certain mail for the Federal government and for transportation of that mail to and from the irradiation facility. These activities incur a total annual cost of **\$20.5 million**.

#### 10. Purchasing requirements

Source of requirement: 39 U.S.C. § 410(b)(4)(A), (b)(5)(B); 40 U.S.C. §§ 3141 *et seq.*, 6701 *et seq.*; 41 U.S.C. §§ 46-48c

Congress has subjected the Postal Service to various federal purchasing laws that mandate a certain level of contractor expense or that limit the Postal Service's ability to select best-value suppliers. Some of these laws impose substantial cost on the Postal Service.

First, the Davis-Bacon Act (DBA) requires that contractors for Postal Service construction projects costing more than \$2,000 pay a prevailing wage to employees, based on a U.S. Department of Labor determination of wages by county. This

<sup>40</sup> *E.g.*, Exec. Order No. 13,416, § 2(a), 3 C.F.R. 251 (2006); Homeland Security Presidential Directive (HSPD)-5, Management of Domestic Incidents, § 2(b), 2003 PUB. PAPERS 229 (Feb. 28, 2003); HSPD-7, Critical Infrastructure Identification, Prioritization, and Protection, § 6(d), 2003 PUB. PAPERS 1739 (Dec. 17, 2003).

<sup>41</sup> While there is no specific statutory requirement for the emergency response activities described in this paragraph, the Commission has suggested that emergency response costs might be particularly amenable to inclusion within the scope of 39 U.S.C. § 3651(b)(1)(C), on the basis of legislative history underlying that provision. FY13 ANNUAL REPORT at 31.

prevailing wage is often, but not always, higher than the industry standard wage in the area. Studies of the additional cost created by the DBA vary widely in their conclusions, ranging from no impact to a 25-percent cost premium. However, much of the information is old, and several studies fail to control for significant variables. An informal survey of several Postal Service contractors and two national suppliers estimated a typical impact of 10 percent to 12 percent on DBA-affected jobs. The Postal Service spends approximately \$300 million per year for projects that could be affected by the law. Using a conservative estimate of 7 percent for higher wages and compliance costs, additional costs attributable to the DBA may be as much as **\$21 million** per year.

Second, the Service Contract Act requires that most service contractors pay their employees “prevailing” wages and benefits established by the Department of Labor, including a requirement that higher wage levels paid by a unionized contractor continue to apply to a successor contractor.<sup>42</sup> This essentially fixes the wages of certain Postal Service contractors, which means that the Postal Service has a limited ability to obtain competitive prices for those service contracts. The requirements also add to the cost of administering contract solicitations.

Third, the AbilityOne program requires the Postal Service to purchase supplies and services exclusively from companies that employ blind and severely disabled persons, the prices for which are established by a separate federal agency.<sup>43</sup> The limited supplier pool, combined with regulatory requirements, results in noncompetitive prices.

#### **B. Lower-Cost Activities (<\$10 Million)**

The Postal Service is subject to other unfunded mandates, but the costs of these appear to be lower than the level that might warrant reporting in the Commission's Annual Report to Congress. For example, compliance with the Freedom of Information Act and Privacy Act is estimated to impose an annual net administrative cost of approximately \$5.2 million. It is also believed that compliance with other laws, such as the Randolph-Sheppard Act and OPM's reduction-in-force regulations, imposes some, albeit probably low, cost.

#### **C. Potential Activities for Other Section 3651(b)(1) Reporting Elements**

The Commission could assess the value of considering other activities for reporting under 39 U.S.C. § 3651(b)(1)(A) and (B) as well.

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<sup>42</sup> See FTC REPORT at 80.

<sup>43</sup> *Id.*

For example, the Postal Service provides free residential delivery and collection to many areas for which its private-sector competitors impose significant surcharges.<sup>44</sup> This difference may not be adequately accounted for in the Commission's current evaluation of Cost Ascertainment Groups K-L offices, Group E Post Office Boxes, and unzoned First-Class Mail and Package Services rates.

Moreover, the Postal Service has incurred costs for delivering free and reduced-rate mail for which Congress has failed to compensate the Postal Service. The Revenue Forgone Reform Act of 1993 authorizes \$29 million to be appropriated each year for 42 years to reimburse the Postal Service, without interest, for certain forgone revenue between FY1991 and FY1998. Congress has not appropriated the amount owed in FY2011 through FY2014, however. According to the Postal Service's most recent budget submission, the deficiency will rise to **\$133.224 million** by FY2015.<sup>45</sup>

#### IV. Conclusion

"Requirements of law" dictate many Postal Service activities and costs. The more or less rough estimates offered in this memorandum suggest that the total cost of such unfunded mandates could add billions of dollars to the Commission's annual calculation under 39 U.S.C. § 3651(b)(1)(C). However, it should be emphasized that while sources of cost estimates for some of the activities discussed in this memorandum are readily available, many of them are not susceptible to precise estimates considering existing resources. Nevertheless, that fact should not preclude the Commission from noting these mandates in its Annual Report.

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<sup>44</sup> See FEDEX, SERVICE GUIDE 118, 125 (2014), [http://images.fedex.com/us/services/pdf/Service\\_Guide\\_2014.pdf](http://images.fedex.com/us/services/pdf/Service_Guide_2014.pdf); UNITED PARCEL SERV., DAILY RATES: UPS RATE AND SERVICE GUIDE 119 (2014), [http://www.ups.com/media/en/daily\\_rates.pdf](http://www.ups.com/media/en/daily_rates.pdf).

<sup>45</sup> UNITED STATES POSTAL SERV., FISCAL YEAR 2015 BUDGET: CONGRESSIONAL SUBMISSION I-9 (2014), <http://www.prc.gov/Docs/89/89542/FY%202015%20Budget%20Congressional%20Submission.pdf>.